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对中国和世界各国的比特币政策的研究

Research on Bitcoin Policy In China and Globally

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摘要

随着数码网络世界的飞速发展,在很多层面上,它完全改变了我们在现实世界的生活。当今数码和科技的变革,比历史上的任何一个时代都大得多。通讯,交通,医疗等等...

然而,社会的主体之一还没有发生如此巨大的改变,那就是:银行。当然,银行业也有了一些创新的数码交易手段,比如:信用卡,Paypal。但是,即便是这些变化的存在,也只是我们目前所拥有的系统的一个部分。而到了近期,科技发展使得虚拟货币有了存在的可能性。这种科技就称为:比特币(创建于2011年)。这篇论文的研究,旨在理解,定义和建议“法律体系该如何规范比特币”。

这篇论文起始于对这项新科技的本原的分析。

比特币是一个如此新兴的科技,所以我们还没有界定它的法律法规,行业标准。这就是为什么本文的大部分研究,是关于中国和众多其他国家的比特币法规的比较。直到2014年,有关比特币的法规定制才被正式提出。同年,纽约州率先提出与比特币相关的法规。他们提出了第一项完善的法规:比特许可证。然而,这些法规还是停留在议案的层面上。

结论是乐观的:在鼓励性的法规下,任何一个社会都有可能获益于比特币。中国对比特币的现有影响给了这个国家很多的机会。当然,风险也是存在的。但是,中国有能力成为比特币在投资、开采、交易、用户群等方面在世界范围内的领航者,这取决于中国在法律法规上的选择。

关键词 : 虚拟货币;比特币; 金融和银行; 中华人民共和国反洗钱法; 证券法; 国际法, 政策定义

Abstract

The rise of the digital world has improved, challenged and, in many cases, completely changed how individuals and societies function in the physical world. The digital and technology revolutions of our current era have arguably already had more dramatic effects than any other developments of the past. Communication, transportation, medicine, etc... Have all been altered to a point where those of merely a few generations ago would find them completely unrecognizable.

However, one pillar of society in particular has remained relatively unchanged: banking, money, and currency. Certainly the banking industry has continued to evolve and introduce digital methods of trade. Significant developments such as credit cards and more recently PayPal are no doubt notable departures from previous eras. But even these dramatic changes exist as parts within the existing system of credit and money.

It has only been in recent years that technology has advanced to a point where a completely original and independent system of currency or trade has become possible to create. The technology being alluded to is the “virtual currency,” Bitcoin. This paper is ambitious in its intent to understand, define, and finally recommend how the Bitcoin technology (created in 2011) should be approached by our current legal system here in the physical world.

This new technology’s nature is first explored. Bitcoin is so new that laws, regulations, and industry standards remain largely undefined. That is why the majority of research is dedicated to comparing the policies being proposed in China with a host of other nations around the world. It wasn’t until 2014 that some of the more serious regulatory developments began. It was then that New York State took the lead regarding US regulations when they proposed the first comprehensive regulations: BitLicense.

Still, such potential laws currently remain as only proposals. The conclusions are optimistic: with encouraging policies, societies have the potential to greatly benefit from Bitcoin. China’s already large influence in the Bitcoin universe gives the nation many opportunities. Risks surely remain as well, but, depending on the policies adopted, China has the ability to be a major Bitcoin leader in regards to investment, mining, exchanges, and users.

Key words: Virtual Currency; Bitcoin; Finance and Banking; Anti-money laundering law; Securities Law; International Law, Policy

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ABBREVIATIONS

BTC	Bitcoin currency
EU	European Union
NYDFS	New York Department of Financial Services
PBOC	People's Bank of China
CFTC	Commodities Futures Trading Commission
SEC	Securities and Exchange Commission
VCBA	Virtual Currency Business Activity
RMB	Ren Min Bi
CSRC	China Securities Regulatory Commission
SDRC	State Development and Reform Commission
USD	United States Dollars
SEBI	Securities and Exchange Board of India
RBI	Reserve Bank of India
AML	anti-money laundering
ETF	exchange-traded fund
FinCEN	Financial Crimes Enforcement Network
IRS	Internal Revenue Service
EDD	Enhanced Due Diligence
GTST	Government Technology Services and Treasury
CTS	Capital Treasury Services
SKAT	Danish Tax Authority
DNB	Dutch National Bank
USLLOC	US Law Library of Congress

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Introduction

Practical challenges Bitcoin presents to legal systems are firstly caused by a lack of understanding. This is a technology that was born and developed from the virtual world by humans who have an advanced understanding of what that means. Unfortunately, legal experts, lawyers, judges, and policy makers will, by default, be forming their initial understandings from a relative point of ignorance. While that may hold true for many other regulated industries and products, (i.e., policy makers seemingly need not be automotive experts in order to effectively regulate traffic regulations) the challenges, dangers and opportunities of Bitcoin technology are arguably represented on a scale far surpassing any other development of modern times.

This is because money, credit and banking are absolutely central to the functioning of our societies. If there is any truth to Bitcoin being referred to as the “money of the future,” scholars, private individuals, governments, and legal systems must sit up and give this technology the careful study and attention it demands. As of the first quarter of 2015, the Bitcoin economy was backed by \$433m in total venture capital investment; \$335m of which was invested in 2014 alone. In 2013, total investment was \$96m. That’s a total-to-date increase of venture capital investment from the end of 2013 by over 342%.¹ These numbers illustrate the momentum that is building behind the still young technology called Bitcoin. In large part because of this youth, Bitcoin still operates in a regulatory grey area in its largest market: China. As investment in the technology and its related start ups continue to rise, clarity to legal approaches will be crucial.

Lou Yao Xiong and Wu Jun from the school of Humanities, Beijing University of Posts and Telecommunications express some of these demands in their paper “Analysis of Legal Issues of Bitcoin” writing:²

The birth of Bitcoin brings new concept to the currency issuance and circulation. Its characteristics of decentralization and full electronization challenge the current currency system. Theoretically, Bitcoin possesses all the attributes that the currency has, and it will become real legal currency in circulation as long as legal permission. The use of Bitcoin in circulation now will suffer legal issues such as lack of legal

¹ Bitcoin Venture Capital <www.coindesk.com/bitcoin-venture-capital/>.

² Lou Yao Xiong, Wu Jun. “Analysis of Legal Issues of Bitcoin.” Beijing University, School of Humanities. 2013.

status and credit, difficulty in evidence collection and remedy, jurisdiction conflict and so on. The problems mentioned above could only be fundamentally solved if the authority accelerated legislation, established a uniform dispute settlement mechanism, speeded [sic] up the establishment of credit system, and enhanced supervision.¹

After understanding what Bitcoin is and what it is not, one must consider if Bitcoin is another disruptive technology or even more than that. Theoretically, Bitcoin itself may just be the tip of the iceberg, as it is (in a technological sense) more akin to a new ecosystem where unknown future disruptive innovations will sprout and grow. Full comprehension of what Bitcoin represents to the future of money and banking is imperative for it to be properly approached by legal systems.

As a new and completely independent technology or product, Bitcoin's legal history is quite brief. However the year 2013 saw Bitcoin's name recognition and participation significantly grow. The newfound attention also has brought on a slew of policy suggestions and widespread debate in legal circles. A number of these more significant and informative developments will be presented and examined.

The first thing to understand is Bitcoin is a technology that knows no borders. It is born from virtual space and has the ability to function wherever computing and digital options are available. The international nature of Bitcoin is another rare feature that challenges governments and private enterprises to coordinate (or not) their respective approaches to Bitcoin's legal treatment. It is therefore a foregone conclusion that some nation states and economies will fare better than others in how they decide to understand and regulate Bitcoin.

With that in mind, this paper's ultimate aim is to analyze China's legal system, banking laws, and monetary policies before outlining the options that are available going forward. As with so many groundbreaking advances that came before Bitcoin (like pre-history's newfound agriculture, the ancient's seafaring breakthroughs, or the medieval era's printing press) we would be unwise to expect the technology called Bitcoin to simply go away. Instead, regardless of personal preferences or ideologies, people are better served by anticipating the continued existence and future growth of this technology.

In October, 2014, renowned financial industry consultancy firm, Mercator Advisory Group, published a research paper titled, "Global Digital Currency Regulations: Divergent Paths." Tristan Hugo-Webb, associate director and author of the published document, begins by

¹ Lou Yao Xiong & Wu Jun "Analysis of Legal Issues of Bitcoin" 2013.

commenting on the potential Bitcoin offers. He writes:

The global payments industry has been taken aback by the rise of the new payment technology represented by Bitcoin and other digital currencies, which at its core has the potential to radically change the paradigm in which electronic payments are handled.¹

Even if Bitcoin itself fails to achieve its goal of developing into a true e-currency, the best of the technology may very well be incorporated into existing systems or built upon completely new and independent virtual currencies in the future. Only with this acknowledgment of Bitcoin's likely significance can our legal systems attempt to successfully serve their purpose of finding justice, protecting rights, and providing safety.

Coming soon: regulations

Bitcoin is often noted for its anarchistic beginnings. The technology and industries sprouting out from Bitcoin are generally new and do not fit under the current structure of the law. Many questions and previous assumptions are getting further examination: Should Bitcoin be regulated or not? If so, to what extent and under whose authority? Are Bitcoins taxable? If so, are they to be taxed as an asset, income, a currency or a commodity? Who and how will such new laws be enforced?

Answers to such questions are already being worked on. More regulations have begun to be decreed, but the content of these regulations differs greatly from place to place.

After publishing his research with Mercator Advisory Group (a major Wall Street investment firm), Hugo-Webb gave an interview with leading Bitcoin news blog, Coindesk.com. In the published interview, Tristan explains that the biggest roadblocks to Bitcoin's further acceptance lies in the question of regulations. Industry standards as well as basic assumptions about their regulations are far from defined. Tristan remarked, "In general, payment regulation tends to be copycat... You will usually see countries following other countries." But the Bitcoin experience has been anything but normal. Instead, he admits that he has been surprised by "the spectrum of regulatory proposals issued by various jurisdictions around the globe."²

His recently published conclusions stress the same findings that I also emphasize throughout my own research findings: the importance of understanding the technology.

¹ Hugo-Webb, Tristan. "Global Digital Currency Regulations - Divergent Paths"

² Hajdarbegovic, Nermin. "Mercator Report Finds Conflicting Bitcoin Regulation Harmful to Industry" Oct. 23, 2014

Hugo-Webb suggests that the primary reason for an unclear regulatory environment is due to “a lack of understanding and experience with the technology.” In the online interview, he’s quoted as saying, “If you were to talk to regulators, I bet you not many of them would understand how Bitcoin works.”

My own findings come to the same conclusion: the first problem for those in authority is the ongoing lack of understanding. When asked for a time frame, Hugo-Webb offers “a couple of years” as the likely time to pass before we start seeing healthy regulations catching up to the technology.

Chapter I: Bitcoin Defined

I.I Does Bitcoin fulfill a need in the market?

Bitcoin must be better understood if it is to gain mainstream acceptance by the public as well as regulators. So we’d better start broad, then work our way into more details. The first point is Bitcoin is actually not a coin. There is no tangible object for which we can hold in our hand and point to. This isn’t what we have come to expect from the concept of money. Until China’s Song Dynasty invented the first paper currencies, the world had used all sorts of less efficient methods for conducting trade including beans, bronze, silver, silks and other fabrics. Resting above all of these has been the time tested, market chosen form of money: gold.

Why do people continue calling Bitcoin the electronic form of gold?¹ After all, we can’t touch our Bitcoins, it would appear the Bitcoins serve no other function (manufacturing, industrial, decorative etc...) other than as a currency. Perhaps the most common arguments against Bitcoin is the suggestion that bitcoins fail to carry anything other than intrinsic value.

The Bitcoin supporter will reply that, while not as obvious as something like gold, the Bitcoin networks value is also inherent. The argument goes, Bitcoin is a network; a peer to peer network to be exact. It’s also the most efficient and highly advanced payment processor the world has ever seen. When these two key points are combined, great value is created. So in fact, the value of the total and ever-growing network is contained within the entire network. Bitcoin is a payments system with roughly 5 billion USD in market capitalization (as of November 2014), and has a massive amount of machines confirming transactions. Additional value exists in what Bitcoin makes possible. The individual bitcoins (for this paper, capitalized Bitcoin refers to the network or technology, while a lowercase bitcoin refers to the transferable “coins”) themselves are the only available vehicle for users to make use of this network. That means the coins are valuable as long

¹ Wong, Joon Ian. “Citi Chief Economist: Bitcoin is Closest Commodity to Gold” Nov. 27, 2014.

Degree papers are in the "[Xiamen University Electronic Theses and Dissertations Database](#)". Full texts are available in the following ways:

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